

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

In the matter of:)	DOCKET NO. S-21130A-20-0339
)	
PATRICK JON RUNNINGER (CRD No. 5223934), an unmarried individual, and)	NOTICE OF OPPORTUNITY FOR HEARING
)	REGARDING PROPOSED ORDER FOR
THE FINANCIAL GROUP, LLC, an)	RESTITUTION AND ADMINISTRATIVE
Arizona limited liability company,)	PENALTIES AND ORDER FOR OTHER
)	AFFIRMATIVE ACTION
Respondents.)	

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Patrick Runninger and The Financial Group, LLC, have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Patrick Runninger is a person controlling The Financial Group, LLC, within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as The Financial Group, LLC, for its violations of the antifraud provisions of the Securities Act.

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.**RESPONDENTS**

2. Patrick Jon Runniger (“Runniger”) is an Arizona resident and has been an Arizona resident during the relevant time period. Runniger has been licensed as an Arizona insurance producer since August 23, 2002, license number 7393919. Runniger has not been registered with the Commission as a securities salesman, dealer, or investment advisor.

3. The Financial Group, LLC (“Financial Group”) is a limited liability company organized under the laws of the state of Arizona on February 21, 2008. Financial Group is a member-managed company and Runniger is the sole member. Financial Group has not been registered with the Commission as a securities salesman or dealer.

4. Runniger and Financial Group may be referred to collectively as “Respondents.”

III.**FACTS**

5. During the relevant time period, Runniger held himself out to be an insurance salesman and offered and sold financial services such as retirement planning, trust and estate planning, annuities, and life insurance products through Financial Group.

6. In addition to insurance products, from at least July 2013, Respondents solicited individuals to invest in debentures issued by companies controlled by EquiAlt, LLC, including EquiAlt Fund, LLC (“Fund I”), EquiAlt Fund II, LLC (“Fund II”), and EA SIP, LLC (“EquiAlt Debentures”). EquiAlt Debentures promised a fixed rate of return at 8% annually, and Investors had the option to either receive monthly payments or to re-invest their rate of return.

7. EquiAlt, LLC, Fund I, Fund II, and EA SIP, LLC, will be collectively referred herein as “EquiAlt,” and those who invested in the EquiAlt Debentures will be referred herein as “Investor(s).”

1 8. Respondents sold at least 42 EquiAlt Debentures to Investors, totaling at least
2 \$3,606,451.35 invested. Many of the Investors were Arizona residents age 65 or older when they
3 invested, and some were in their 70s or 80s.

4 9. From 2013 through 2019, Runninger earned commissions for sales of EquiAlt
5 Debentures totaling at least \$293,599.53.

6 10. Some Investors had been previous clients of Runninger he knew through his insurance
7 business or through assisting them with trust and estate planning. Runninger provided at least one
8 Investor with his business card for Financial Group while pitching EquiAlt.

9 11. One Investor contacted Runninger to revise her trust after her husband passed away.
10 When Runninger looked at the Investor's tax documents, he advised the Investor to invest her entire
11 savings account in EquiAlt Debentures. The Investor only wanted to invest a quarter of her savings
12 account. Runninger returned to the Investor's home with Cal Babbini ("Babbini"), EquiAlt's Client
13 Relations Director, and another individual to pitch EquiAlt Debentures. Runninger told the Investor
14 her investment was insured and there was no risk. After the presentation, the Investor invested her
15 entire savings.

16 12. One Investor had been Runninger's client for many years, and the Investor understood
17 Runninger to be an investment advisor that managed her IRA account. The Investor moved her
18 deceased husband's IRAs into her name. When Runninger was informed of this transaction, he called
19 the Investor and told her he was with a new company, EquiAlt, and he could assist her in rolling over
20 her remaining IRAs into EquiAlt with an 8% return. The Investor completed her investment in
21 EquiAlt in December 2019.

22 13. Runninger, through Financial Group, conducted Focus Group seminars where he
23 presented on topics related to financial planning to individuals 55 years of age and older. The Focus
24 Group seminars were financed by EquiAlt and an email between Runninger, Babbini, and Christos
25 Anastasopoulos, a Senior Manager with EquiAlt, indicated they planned on pitching EquiAlt to the
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1 Focus Group. According to Runniger, Financial Group paid attendees \$150 for their participation
2 in the Focus Group.

3 14. Runniger provided at least some, if not all, of the Investors with marketing material
4 that advertised EquiAlt Debentures as an “[o]ppportunity to make investments in whole distressed
5 Single Family Real Estate focused on equity [sic] on acquisition [sic] buying and buy-to-rent
6 strategies.”

7 15. Runniger provided at least some, if not all, of the Investors with EquiAlt’s private
8 placement memoranda (“PPMs”), subscription agreements (“Subscription Agreement(s)”), and
9 summary of terms (“Summary of Terms”).

10 16. The PPMs and the Summary of Terms stated that Investors would receive 8% return
11 on their principal which would be paid either monthly, quarterly, semi-annually, annually, or growth
12 during a 3- or 4-year term. These terms were summarized in the Summary of Terms.

13 17. The PPMs also stated that the purpose of the investment was to generate capital for
14 EquiAlt to “purchase, improve, lease and/or dispose of distressed real property, enter into
15 opportunistic loan transactions and/or engage in other ventures.”

16 18. The Subscription Agreements outlined the units that the Investors were purchasing at
17 \$10.00 per unit.

18 19. On or around June 2019, Runniger began building his own “team” of advisors to
19 solicit investments in EquiAlt Debentures. EquiAlt tracked Investors brought on by an advisor on
20 Runniger’s team under Runniger’s name. Runniger was in a position of leadership and control
21 over his advisors and was the point of contact between the advisors and EquiAlt. Runniger received
22 a 1% commission from investments secured by a member of his team. Runniger distributed
23 materials such as the PPMs, Subscription Agreements, and Summary of Terms to his advisors. Upon
24 information and belief, Runniger’s advisors were paid commissions through Financial Group.
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1 20. At least some of the Investors gave their investment money for EquiAlt Debentures
2 directly to Runniger. Runniger also helped facilitate the movement of Investor's money from IRAs
3 into EquiAlt.

4 21. At least some of the Investors would be impacted negatively if they lost the money
5 they invested in EquiAlt Debentures.

6 22. Many Investors did not have investment experience and/or did not qualify as
7 accredited investors.

8 23. On February 11, 2020, the Securities and Exchange Commission ("SEC") filed a
9 complaint in the U.S. District Court for the Middle District of Florida against EquiAlt, LLC, EquiAlt
10 Fund, LLC, EquiAlt Fund II, LLC, EA SIP, LLC, and related parties. In its complaint, the SEC
11 alleged that EquiAlt has been conducted as a Ponzi scheme since 2011 and has raised over \$170
12 million from over 1,100 investors.

13 24. On February 14, 2020, the judge in the SEC case issued an order appointing a receiver
14 for EquiAlt to take immediate possession of all EquiAlt property, assets, and estates.

15 **Untrue Statements and Omissions by Runniger and Financial Group**

16 25. Subscription Agreements for the EquiAlt Debentures specifically state that the "Units
17 are being sold through the Company without commission." Respondents omitted to tell at least some
18 of the Investors that he was being paid commissions for the sale of the EquiAlt Debentures and for
19 the sale of EquiAlt Debentures by advisors on his team.

20 26. Respondents misrepresented and/or omitted to at least some of the Investors the risk
21 involved with investing in EquiAlt Debentures. Runniger informed one Investor her investment was
22 safe and did not provide any other disclosures prior to investing. Runniger told another Investor her
23 investment was insured and there was no risk.

24 27. Respondents misrepresented to at least one Investor the liquidity of the EquiAlt
25 Debentures. Runniger represented to at least one Investor that she was not able to withdraw her
26 funds until the end of the investment term, while he represented to another Investor that she could

1 withdraw her funds at any time. In December 2019, the Investor requested her principal be refunded.
2 Runniger told the Investor he would issue the refund; however, the Investor was not refunded. After
3 the refund request, Runniger terminated correspondence with the Investor. Runniger did not
4 inform the Investor about the SEC lawsuit during this correspondence.

5 28. On October 2, 2019, Babbini forwarded Runniger an email from Barry Rybicki
6 (“Rybicki”) dated July 2, 2019, that stated, in part, “we [EquiAlt] have been examined by the SEC
7 over the last 8 months.” On November 4, 2019, Runniger forwarded to an individual a different
8 email from Rybicki that stated in part, “we [EquiAlt] have been in the middle of a private examination
9 from the SEC since June 2018.” The Investor referenced in Paragraph 12 completed her investment
10 in December 2019. Respondents failed to disclose the pending SEC investigation to the Investor.
11 When the Investor contacted Runniger about the lawsuit on or around February 2020, Runniger
12 told the Investor he knew nothing about it, and it must be an internet rumor.

13 29. Respondents failed to disclose to at least some, if not all, Investors that Runniger
14 was subject to a prior cease and desist action. On March 24, 2003, the Ohio Division of Securities
15 filed a Cease and Desist against Runniger, alleging Runniger offered and sold CDs to Ohio
16 residents through newspaper advertisements that contained misleading statements and omissions of
17 material facts. On October 30, 2003, Runniger was ordered to cease and desist.

18 IV.

19 VIOLATION OF A.R.S. § 44-1841

20 (Offer or Sale of Unregistered Securities)

21 30. From on or about July 2013, Respondents offered or sold or participated in the sale or
22 purchase of securities in the form of debentures, notes, or evidence of indebtedness, within or from
23 Arizona.

24 31. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
25 Securities Act.

26 32. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

33. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

34. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

35. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents misrepresented and/or omitted to at least some of the Investors the payment of commissions, when in fact they received at least \$293,599.53 in commissions from the sale of the EquiAlt Debentures;

b) Respondents misrepresented and/or omitted to at least some of the Investors the risk involved with investing in EquiAlt Debentures or represented that the investment was safe and there were no risks, when in fact the PPM stated that these were highly speculative investments;

c) Respondents misrepresented to at least one Investor the liquidity of the EquiAlt Debentures by telling Investors that they could withdraw at any time, when in fact there was no certainty of when an Investor could liquidate or transfer an EquiAlt Debenture;

d) Respondents misrepresented and/or misleadingly omitted to at least one Investor that EquiAlt's funds were under investigation by the SEC; and

1 e) Respondents failed to disclose to at least some, if not all, Investors that
2 Runniger was subject to a prior cease and desist action.

3 36. This conduct violates A.R.S. § 44-1991.

4 **VII.**

5 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

6 37. From at least February 21, 2008 through the present, Runniger has been and/or held
7 himself out as a member of Financial Group.

8 38. From at least February 21, 2008 through the present, Runniger directly or indirectly
9 controlled Financial Group within the meaning of A.R.S. § 44-1999. Therefore, Runniger is jointly
10 and severally liable to the same extent as Financial Group for its violations of A.R.S. § 44-1991 from
11 at least February 21, 2008 through the present.

12 **VIII.**

13 **REQUESTED RELIEF**

14 The Division requests that the Commission grant the following relief:

15 1. Order Respondents to permanently cease and desist from violating the Securities Act
16 pursuant to A.R.S. § 44-2032;

17 2. Order Respondents to take affirmative action to correct the conditions resulting from
18 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
19 A.R.S. § 44-2032;

20 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
21 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

22 4. Order that Respondent be subject to any order of restitution, rescission, administrative
23 penalties, or other appropriate affirmative action.

24 5. Order any other relief that the Commission deems appropriate.
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IX.**HEARING OPPORTUNITY**

Each Respondent may request a hearing pursuant to A.R.S. §§ 44-1972 and 44-3212 and A.A.C. R14-4-306. **If the Respondent requests a hearing, the Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

X.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if the Respondent requests a hearing, the Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days

1 after the date of service of this Notice. Filing instructions may be obtained from Docket Control by
2 calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/hearing>.

3 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant
4 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
5 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
6 addressed to Elizabeth Schmitt.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the
8 original signature of the answering respondent or respondent's attorney. A statement of a lack of
9 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
10 denied shall be considered admitted.

11 When the answering Respondent intends in good faith to deny only a part or a qualification
12 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
13 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an Answer
15 for good cause shown.

16 Dated this 13th day of November, 2020.

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18 /s/ Mark Dinell
19 Mark Dinell
20 Director of Securities
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